

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:) CASE NO. BK12-40770
)
KIMBERLY L. HERNANDEZ,) CH. 13
)
Debtor(s).)

ORDER

Hearing was held in Lincoln, Nebraska, on January 16, 2013, regarding Fil. #69, Objection to Claim of Nebraska Department of Health and Human Services, filed by Debtor, and Fil. #74, Resistance, filed by Nebraska Department of Health and Human Services. Rebecca Abell-Brown appeared for the Debtor and Ronald Sanchez appeared for Nebraska Department of Health and Human Services.

The Debtor has objected to the proof of claim of the Nebraska Department of Health and Human Services ("DHHS"), Division of Children and Family Services (hereinafter "Department"). The claim in the amount of \$924.39 is alleged by the Department in the nature of child support which was assigned to the Department as a matter of law while Debtor's child Alecia M. was in foster care under the jurisdiction of the Department. The Department asserts that the claim is a priority child support claim. The funds were received by the Debtor between June and September 2007.

The Debtor claims that the money was received from a garnishment of an individual in another state who falsely used the Social Security number of Alecia's deceased father. Because the payments did not come from the child's father, but from someone else using the father's Social Security number, the Debtor asserts that the money was not child support and therefore was not assigned to the Department as a matter of law and should not be allowed any priority in this case.

The Department provided notice to the Debtor in 2008 and thereafter that the Department considered the money to be the equivalent of child support and assessed the Debtor with an overpayment charge. It gave her an opportunity to contest the overpayment allegations before the assessment became final. Debtor did not contest the matter and it became final under Nebraska law as a child support overpayment.

IT IS ORDERED that the Objection, Fil. #69, is denied. The time to challenge the determination of the debt by the Department was in 2008, not in a bankruptcy case filed in 2012.

DATED: February 15, 2013

BY THE COURT:

/s/ Timothy J. Mahoney
United States Bankruptcy Judge

Notice given by the Court to:

*Rebecca Abell-Brown Ronald Sanchez
Kathleen Laughlin

* Movant is responsible for giving notice of this order to all other parties not listed above if required by rule or statute.